

**Before the
Federal Communications Commission
Washington, DC 20554**

In the matter of)	
)	
Facilitating the Provision of Spectrum-Based)	
Services to Rural Areas and Promoting)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies)	
To Provide Spectrum-Based Services)	
)	
)	
To: The Commission)	

COMMENTS OF SMITH BAGLEY, INC.

Smith Bagley, Inc. (“SBI”), by counsel and pursuant to the Commission’s *Notice of Inquiry* (“*NOI*”), FCC 02-325 (released December 20, 2002) hereby provides the following comments in the above-captioned proceeding. At paragraph 30 of the *NOI*, the Commission requested comment on whether the Commission’s Eligible Telecommunications Carrier (“ETC”) rules have promoted deployment of wireless service to rural areas and greater subscribership in rural areas. SBI’s comments focus solely on how the Commission’s commitment to Native American lands over the past several years has and will affect tribal lands (and proposed Near Reservation lands) in rural parts of Arizona and New Mexico, and how access to universal service funding by wireless carriers has improved access to telephone service in these areas.

I. Introduction to SBI’s Service.

Over 13 years ago, SBI acquired a cellular license to operate the Arizona-3 Rural Service Area (“RSA”). Since then it has acquired cellular spectrum in the New Mexico-1 RSA, the New Mexico-3 RSA, and PCS spectrum in the Flagstaff, AZ BTA and the Farmington, NM BTA, which includes lands in Utah and Colorado. There are five Native American reservations within

SBI's service area: Navajo Nation, Hopi, White Mountain Apache, Pueblo of Zuni, and the Ramah Navajo.

There are no metropolitan areas within SBI's service area, and there are no towns over 8,000 in population, with but one exception. SBI's service area comprises approximately 21,000 square miles of Native American reservation land, by far the largest in the U.S. SBI is licensed to serve approximately 200,000 people living on reservation lands. The Navajo Nation alone stretches 26,897 square miles across Arizona, New Mexico and southern Utah, with approximately 47,603 households scattered throughout and a total population of approximately 120,000.

In 1999, the Benton Foundation estimated that roughly 27% of the households on Navajo reservation lands had telephone service. On the other reservation lands, penetration rates are similarly dismal. In many areas, the average per capita income is approximately \$5,000. Nowhere else in the United States do people suffer such poverty and its obvious effects. The state of telephone infrastructure on reservation lands served by SBI can best be described as Third World. In many areas, landline telephone service is unavailable and in many others it is unreliable and poorly maintained.¹

Long before it was eligible to apply for ETC status, SBI attempted to reach out to Native American lands by offering a "lifeline access" service offering priced at approximately \$10.00 per month. The offering was largely unsuccessful and SBI's unscientific customer research indicated that many people who suffer extreme poverty simply could not afford \$10.00 per month, and many others dropped off the landline telephone network (all of which are ETCs) due to excessive toll charges, likely the result of small local calling areas.

¹ In many areas, landline plant is so antiquated that telephone service fails when the wires get wet.

Following Congress's decision to amend the Communications Act in 1996 to provide for competitive ETCs, SBI applied for ETC status in Arizona and New Mexico. Following lengthy proceedings, SBI received ETC status on Native American lands in Arizona in May 2001 and New Mexico in February 2002. In July 2002, the Arizona Corporations Commission ("ACC") extended SBI's ETC status on Navajo lands westward into the Flagstaff BTA. Currently, SBI has an application pending with the New Mexico Public Regulatory Commission to extend its ETC status on Navajo lands eastward. In addition, SBI has an application pending with the FCC to be an ETC on Navajo lands in southern Utah, which has been pending for over 8 months.² Finally, SBI has an application pending with the ACC to extend SBI's ETC status in non-reservation lands located adjacent to the Navajo, Hopi, and White Mountain Apache reservations.

II. The FCC's Enhanced Lifeline and Link-Up Programs for Native Americans Have Been an Unqualified Success in Arizona and New Mexico.

In 2000, the Commission enhanced the benefits available under its Lifeline and Link-Up programs.³ Specifically, the Commission made available a new "Tier 4" Lifeline subsidy of up to \$25.00, and an additional \$70.00 of Link-Up support for qualifying persons residing on Native American lands. All ETCs are eligible to offer these benefits to persons living on reservation lands. In adopting those changes, the Commission recognized that its commitment to extend telephone service to all Americans could only be met if it employed tools which would provide

² See Smith Bagley, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah (filed May 24, 2002); Public Notice, DA 02-1466 (WCB rel. June 21, 2002).

³ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12230 (2000) ("Tribal Order").

private companies with an incentive to construct facilities and reach out to those areas and people most in need.⁴

In response to the Commission's *Tribal Order*, SBI decided to offer a new Lifeline service, branded VisionOne™, to persons residing on Native American lands, for \$1.00 per month. The offering includes a local calling area throughout SBI's entire network, with a long list of numbers, including those of hospitals, police and fire departments, and other important community services, that subscribers may call without incurring airtime or toll charges. SBI also determined that because Native American lands in its service area are extremely rural (fewer than 5 persons per square mile), traditional marketing methods typically employed by telephone companies would be ineffective. Many potential subscribers have little access to transportation, speak little English, and would likely never travel to visit a storefront operation to purchase telephone service. Thus, SBI initiated an outreach effort to bring the store to the people.

SBI operates a mobile sales office that moves throughout reservation lands, visiting many small towns, often a hundred or more miles from the nearest sales office. SBI uses radio, newspaper, and local media to advertise activation events, which are held over a one or two-day period at a local chapter house, community center or school. The company sets up a complete storefront operation so that customers can learn about telephone service, including how to use a wireless phone, and sign up for telephone service. SBI employs persons fluent in the native language to assist customers who do not speak English.

⁴ See *id.* at 12235-36 ("We note that, unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses. In addition, given that the financial resources available to many tribal communities may be insufficient to support the development of telecommunications infrastructure, we anticipate that the enhanced Lifeline and expanded Link Up support will encourage such development by carriers. In particular, the additional support may enhance the ability of eligible telecommunications carriers to attract financing to support facilities construction in unserved tribal areas.") (footnote omitted).

Since June 2001, when SBI first rolled out VisionOne™, over 25,000 persons have signed up. SBI estimates, based on customer data, that roughly 76%, or 19,000, did not have telephone service of any kind at the time they signed up for VisionOne™.⁵ SBI does not know how many new Lifeline subscribers its wireline competitors have signed up since Tier 4 benefits went into effect in October 2000. However, there is absolutely no doubt but that demand for telephone service on reservation lands is robust and that SBI's product has been well received.

By providing Tier 4 support, the Commission has closed the affordability gap for many people living at a subsistence level and has had dramatic effects on reservation lands. Already, there have been several published reports of people using SBI's service to immediately call for 911 assistance. Without telephone service, these people often had to walk a mile or more to reach the nearest telephone. SBI has also instituted a list of community service, health, educational, and safety organizations which can be called toll and airtime free. SBI's internal reports indicate that calls to these organizations have been substantial and consistently rising.

Enhanced Lifeline and Link-Up benefits have already resulted in significant telephone subscribership gains in its service area. By expanding these important benefits, the Commission has substantially improved the quality of life in many remote areas on reservation lands. The continued availability of these enhanced programs will be critical to the achievement of further progress in this area.

III. High-Cost Support is an Integral Part of the Commission's Success on Native American Lands.

SBI's ability to extend service to remote areas and meet the demand created by the Commission's enhanced Lifeline and Link-Up benefits is predicated upon the receipt of

⁵ Of those new SBI subscribers who reported having prior access to telephone service, roughly 74% did not have a telephone in their home and only had access to a "message telephone" — a number of a friend, relative or employer with whom a caller may leave a message for the called party.

sufficient high-cost support. Without high-cost support, SBI would be completely unable to construct the facilities needed to meet customer demand created by the enhanced benefits.

For example, in 2001, SBI's network was 100% analog and its coverage and channel capabilities were sufficient to maintain its existing customer base. In less than two years, SBI's customer base and minutes of use ("MOU") have increased dramatically. In addition, SBI's customers are now spread across a much larger area, as its outreach efforts have touched people living in previously unserved or underserved areas. Without high-cost support, there would be no means for SBI to extend service to these people.

The Commission's current high-cost support mechanism provides exactly the right incentive for SBI to extend service into areas that would otherwise not be economically feasible to construct and maintain. SBI receives high-cost support only when it gets a subscriber and loses support when a subscriber terminates service. Thus, SBI has every incentive to maintain high customer satisfaction levels, which includes appropriate service quality and customer service.

In just 19 months, SBI has responded to the dramatic increase in customer demand with network construction designed to meet its customers' needs for basic telephone service, and to lay the foundation for the future. SBI has now completed the installation of 8 cell sites serving Native American lands in its ETC service area. At this time 18 additional cell sites are under construction or planned for the immediate future. To meet customer demand, SBI has taken steps to substantially increase its channel capacity. SBI added 168 channels with new cell sites completed in 2002, and approximately 500 channels will be added upon the completion of new cell sites that are currently in the construction or planning stages. Moreover, SBI has added well

over 150 channels by sectorizing (*i.e.*, changing from Omni to tri-sector configuration) several of its existing cell sites.

As infrastructure improves, SBI will be able to offer, within the next few months, an increased level of local usage included in its VisionOne™ rate plan. Thus, subscribers will continue to have the ability to avoid onerous intraLATA toll charges, and they will receive additional local usage for the same price. Without high-cost support, SBI would have never been able to construct sufficient network facilities to provide high-quality service in most of these remote areas. With support, SBI's network is rapidly expanding to meet customer needs and provide them with the kinds of choices envisioned by Congress when it enacted the universal service provisions of the 1996 Telecommunications Act.⁶

Because its PCS licenses are digital-only, SBI has ordered and installed a new switch that is capable of handling both analog and digital traffic on its cellular and PCS networks. This new switch can provide customers with advanced features and in the future will be capable of handling high-speed data. This is extremely important for two reasons. First, SBI very much wants to provide reservation lands with the benefits of digital service, including the longer battery life that it affords. Many of SBI's customers rely on its service as their *primary* telephone. Thus battery life, call quality, and advanced services are all important features that SBI will be able to deliver.

Second, digital service is capable of delivering higher data throughputs, and SBI expects to deliver broadband data service through its next generation of equipment. The demand for Internet access is significant on reservation lands, and in many areas it does not appear that high-speed access will be available through the landline networks for the foreseeable future. Meeting

⁶ As SBI's infrastructure and product offerings improve, incumbent LECs will for the first time be required to improve customer service, service quality, and consider expanding their local calling areas.

demand for basic telephone service in areas with less than 40% telephone penetration is a large task. Nevertheless, it is SBI's intent to roll out wireless broadband data access over the same facilities used to provide voice services at the earliest possible date. There is no question but that such an undertaking on Native American lands will only be possible with high-cost support.⁷

One of the problems SBI has faced is the fact that most Native Americans living on reservation lands do not recognize state boundaries. As a result, since initiating its universal service offering in May 2001, many potential Navajo subscribers who reside outside of SBI's ETC service area, but within the reservation boundaries, have complained about a lack of access to SBI's VisionOne™ service. For example, SBI has turned away a large number of potential subscribers living in Utah, many of whom have no telephone service. SBI urges the Commission to expedite action on its pending application for ETC status on Navajo lands in Utah, so that the benefits described herein can be brought to these deserving people and areas as well.

In sum, on reservation lands served by SBI, telecommunications infrastructure is blossoming and more tribal residents are signing up for its service every month. Telephone subscribership is increasing and telephone usage among people with service is increasing as well. The benefits of improved access to 911 service and important health, education and employment

⁷ Some ILECs have complained in state ETC designation proceedings that provision of broadband data is not an appropriate use of high-cost support funds, yet ILECs routinely provide Digital Subscriber Line service over the same facilities used to provide voice services. SBI seeks to do exactly the same thing. *See* 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services *and advanced telecommunications and information services*, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.") (emphasis added).

services have been dramatic.⁸ In short, one can imagine few uses of scarce government resources that have had a more direct and positive effect on people and areas that need them most.

IV. The Commission Should Expand Enhanced Lifeline and Link-Up Benefits to “Near Reservation” Lands.

In the *Tribal Order*, the Commission determined that Enhanced Lifeline and Link-Up benefits should be extended to “near reservation” lands, as that term is defined by the Bureau of Indian Affairs (“BIA”).⁹ Shortly thereafter, the Commission suspended the effectiveness of that portion of the *Tribal Order* due to concerns that some near reservation lands are located in metropolitan areas and may result in unnecessary support being made available.

Since then SBI has had several meetings with the Commission, urging that use of the BIA’s definition of Near Reservation lands should be abandoned in favor of a more workable formula that focuses benefits on rural areas – which are more likely to suffer from lack of consumer choice and telephone access problems than those in or near metropolitan areas. It is SBI’s experience that rural areas in Arizona and New Mexico that are within 50 miles of a reservation and have fewer than 50 persons per square mile have demographic characteristics similar to those on reservation lands. A substantial number of Native Americans live adjacent to reservation lands, in similar conditions, but are not eligible for Tier 4 Lifeline benefits. In the region south of Navajo and north of the White Mountain Apache reservations, the same barriers to telephone access exist. There are a number of towns that have people of means, where SBI has focused its business for over a decade, but there are many more areas where a substantial number

⁸ Lost in the debate about wireless E-911 is the fact that 911 must come first. In remote areas such as those served by SBI, having basic facilities needed to ensure that 911 calls are answered by the appropriate PSAP is of paramount concern to citizens who have no service.

⁹ See *Tribal Order*, *supra*, 15 FCC Rcd at 12218-19.

of people have no telephone service or rely on shared phones, party lines, or message telephones.¹⁰

The telephone penetration rates in Apache and Navajo counties in Arizona are among the lowest in the United States. Traditional wireline telephone companies have failed to provide solutions for these people. SBI is ready and able to reach out to these communities and people. The Commission should use the tools at its disposal to extend its very successful Lifeline and Link-Up programs to those areas which need it most.

V. CONCLUSION.

The Commission's decision to permit competitive ETCs to serve Native American lands where traditional telephone service has failed to take hold has proven to be an enormous success. Enhanced Lifeline and Link-Up benefits, targeted to reservation lands, represent an efficient and valuable use of government resources, made available on a non-discriminatory basis to all eligible carriers. Incentives to extend services and infrastructure have caused SBI to promote telephone subscribership in many areas that would not otherwise support telephone service. Enhanced Lifeline and Link-Up benefits have for the first time enabled many people living in these areas who cannot afford telephone service to get connected.

The Commission should continue monitoring the impact that competitive ETCs are having on reservation lands, especially those which suffer from low levels of telephone penetration. In addition, SBI urges the Commission to grant its application for ETC status on Navajo lands in Utah so that the benefits described above can be expedited to people and areas that badly need telephone service. Finally, SBI asks the Commission to quickly extend enhanced Lifeline and Link-Up benefits to Near Reservation lands, using a definition that targets benefits

¹⁰ SBI has proposed a definition of Near Reservation lands which departs from the BIA's definition more accurately targets support to those communities most in need.

to people and areas most in need, so that innovative companies can extend the benefits of basic telephone service, as well as enhanced services, to those areas that need them most.

Respectfully submitted,

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